

1  
2  
3  
4  
5  
6  
7  
8 UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
9 AT TACOMA

10 DANIEL J KEARNEY,

11 Plaintiff,

12 v.

13 JOHN D SNAZA et al.,

14 Defendants.

CASE NO. C13-5383 RJB-JRC

REPORT AND RECOMMENDATION

NOTED FOR:

DECEMBER 20, 2013

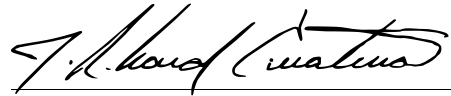
15 The District Court has referred this 42 U.S.C. § 1983 civil rights action to United States  
16 Magistrate Judge J. Richard Creatura. The Court's authority for the referral is 28 U.S.C. §  
17 636(b)(1)(A) and (B), and Magistrate Judge Rules MJR3 and MJR4.

18 Plaintiff asks the Court to enter default against defendants (ECF No. 50). Defendants  
19 filed an answer to the complaint three days after plaintiff's motion was filed (ECF No. 51). The  
20 Court recommends that plaintiff's motion for default be denied because default is a drastic  
21 remedy that is only appropriate in extreme circumstances and cases should be decided on the  
22 merits whenever possible. *Faulk v. Allen*, 739 F.2d 461, 463 (9th Cir. 1984)(citing *Schwab v.*  
23 *Bullocks, Inc.*, 508 F.2d 353, 355 (9th Cir.1974)).  
24

1 Plaintiff has also filed a motion for contempt or sanctions based on defendants' failure to  
2 filing a timely answer (ECF No. 52). Plaintiff's second motion is noted for November 29, 2013  
3 (*id.*). Plaintiff's second motion is not a dispositive motion and the Court will address it in a  
4 separate order.

5 Pursuant to 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72(b), the parties shall have  
6 fourteen (14) days from service of this Report to file written objections. *See also* Fed. R. Civ. P.  
7 6. Failure to file objections will result in a waiver of those objections for purposes of de novo  
8 review by the district judge. *See* 28 U.S.C. § 636(b)(1)(C). Accommodating the time limit  
9 imposed by Fed. R. Civ. P. 72(b), the clerk is directed to set the matter for consideration on  
10 December 20, 2013, as noted in the caption.

11 Dated this 21st day of November, 2013.

12   
13

14 J. Richard Creatura  
United States Magistrate Judge  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24